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The Mirror Image of Asylums and Prisons

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THE MIRROR IMAGE OF ASYLUMS AND PRISONS

Sacha Raoult and Bernard E. Harcourt¹

Abstract

This article analyzes trends in prison rates and mental hospital rates in France since the earliest available statistics. It shows that, on almost two centuries of data and amidst an agitated political history, every asylum trend in France is "countered" by an inverse prison trend, and vice-versa. Both trends are like a mirror image of each other. We reflect on the possible explanations for this intriguing fact and show that the most obvious ones (a population transfer or a building transfer) are not able to account for most of the relationship. After these explanations have been dismissed, we are left with an enigma with wide theoretical and practical implications. How is it that when prisons fall, asylums rise and when prison rise, asylums fall? We suggest possible research avenues drawing on the 1960s and 1970s critical literature on "total institutions" and offer implications for current theories of the "punitive turn" and current quantitative studies of prison rates.

¹ Sacha Raoult is a Mellow Fellow at University of Chicago and a *maître de conférences* at Aix-Marseille Université ; Bernard Harcourt is the Isidor and Seville Sulzbacher Professor of Law at Columbia University, Director of the Columbia Center for Contemporary Critical Thought and *directeur d'étude* at the *Ecoles des Hautes Etudes en Sciences Sociales*. We would like to acknowledge Andrew Abbott, James Evans and Virginie Gautron for advice on previous versions of this paper, as well as Julian Metenier and Raymond Fang for their exceptional assistance in the research process.

Introduction

During the Vichy régime in France, a dramatic number of asylum patients died in what has come to be known as the “*hécatombe des fous*,” the hecatomb of the insane: Famine and malnutrition, misdiagnosed by the medical professionals, and the delayed response of the Vichy government, took the lives of about 45,000 mental hospital patients (von Bueltzingsloewen 2009). In tandem with a sharp drop in new asylum admissions, explained at the time by lowered “alcoholism” admittances, the extremely high mortality of patients produced a sharp drop in mental hospitalization rates—sliding almost by half from a high of 278 per 100,000 in 1940 to 164 per 100,000 by 1946. The rapidity of the decline was unparalleled in the history of asylums in France.

During the very same period, the French prison population rose in an unprecedented fashion, with three distinct waves of prisoners: a first wave of traitors and spies who aided the German enemy from the beginning of the war in 1939 to the armistice of September 1940; a second wave from the beginning of the occupation to the *Libération* in June 1944—the largest contribution to the inflation—composed of political prisoners, *résistants*, and communists, sentenced severely in newly created “special” courts, as well as prisoners convicted by German courts but detained in French prisons; and finally a third wave composed of wartime collaborators with the Germans. By the end of the war, prison rates had more than quadrupled from about 40 per 100,000 in 1937 to 170 per 100,000 in 1944.

The direct causes of the dramatic drop in asylum patients and steep rise in the prison population seem completely unrelated, although naturally they were all tied to the

war and the occupation of France; but while they appear disconnected, the relationship between the trends, as reflected in Figure 1, is eerie, to say the least:

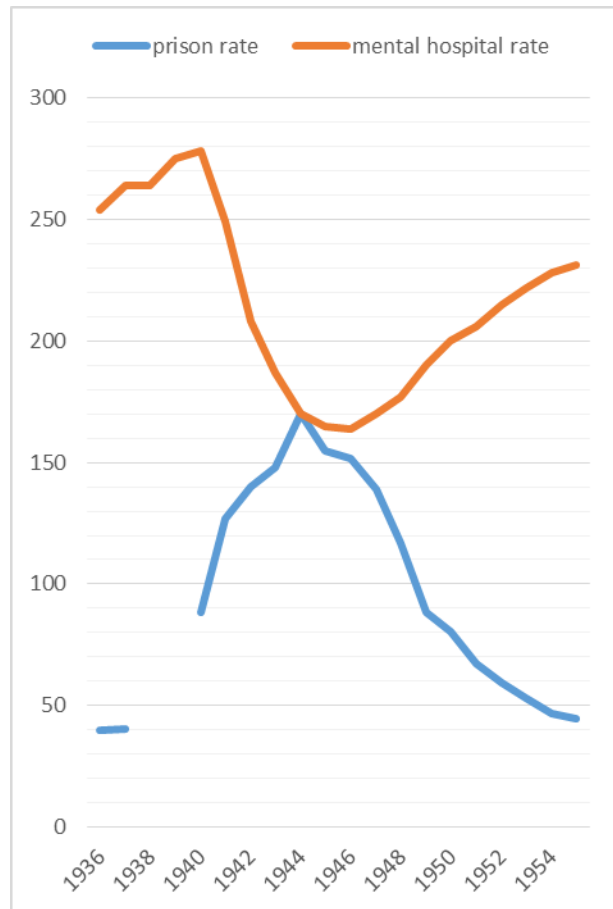


Figure 1: Rates of Asylum and Prison Populations in France (1936-1955)

The Vichy régime was not the only time period where a quantifiable inverse relationship between asylum and prison populations happened in France. In fact, this relation is even starker over the *longue durée* of existing, reliable statistics. Figure 2 extends the time series from the earliest date of reliable statistics, the year 1851, to the

present. Figure 3 compares the 5-year average change for each of the time series over the same period—with the exception of the world wars where the data is noisier because of the more dramatic shifts and lags. One could only describe the relationship as mirror image: when prisons rise, asylums fall; when prisons fall, asylums rise...

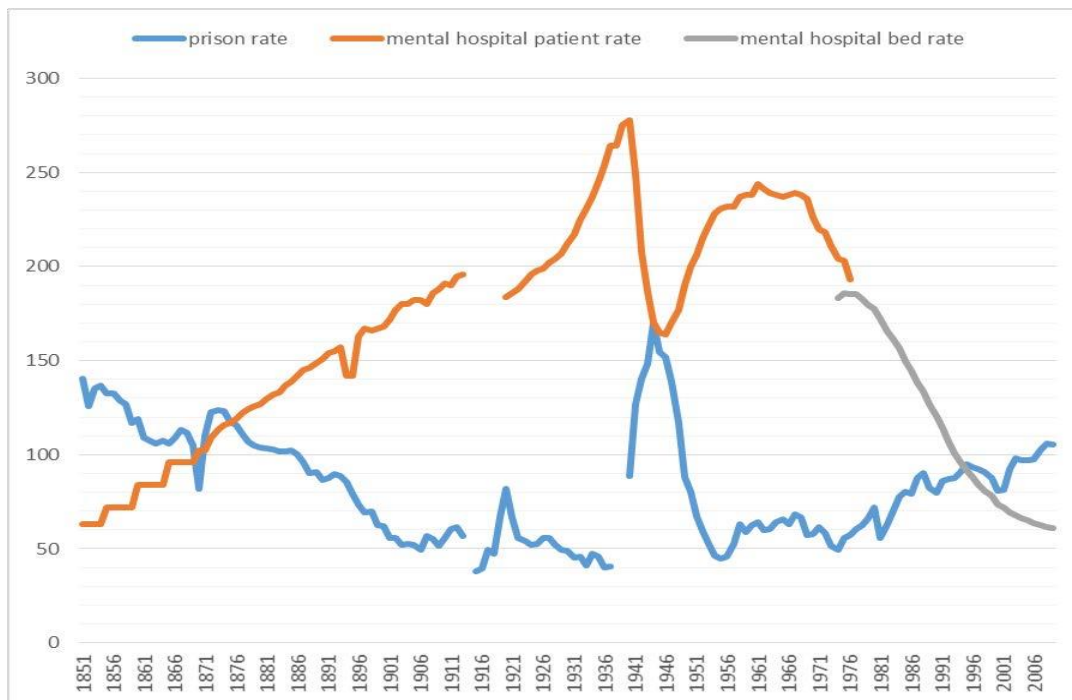


Figure 2: Rates of Asylum and Prison Populations in France (1851-2009)

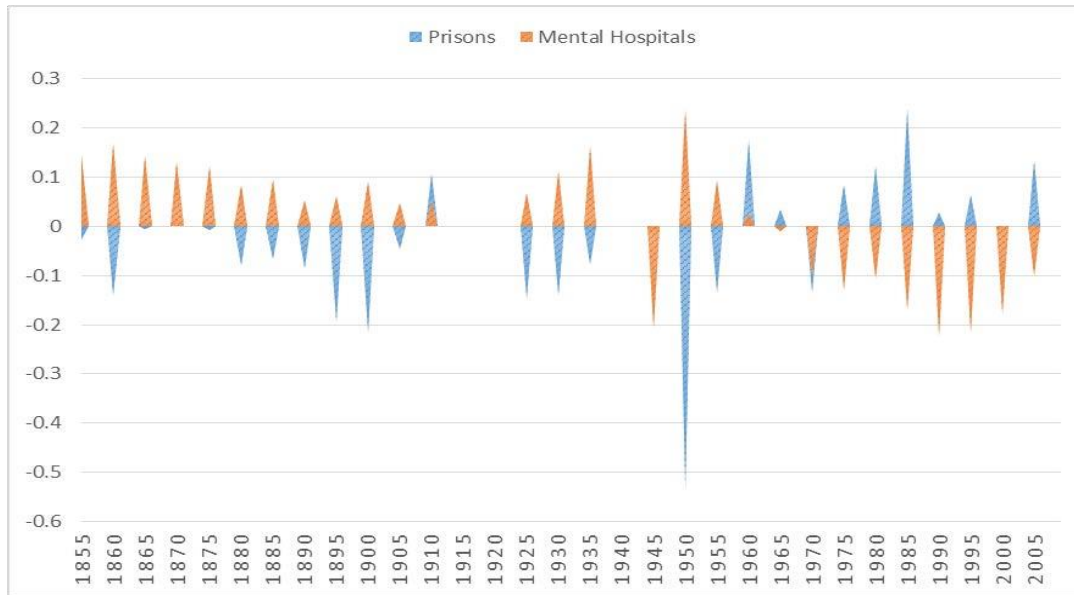


Figure 3: 5-year Average Percentage Change for Asylum and Prison Populations in France

(1850-2010)

This is not the first time an inverse relationship between asylums and prisons was found. In fact, the French situation is entirely consistent with recent research on the United States and also tracks the trends in other European countries. In the United States, over the entire period of available population statistics, asylum and prison rates have trended in opposite directions, producing a virtual mirror image of each other, as reflected in Figure 4 (Harcourt, 2006 and 2011a).

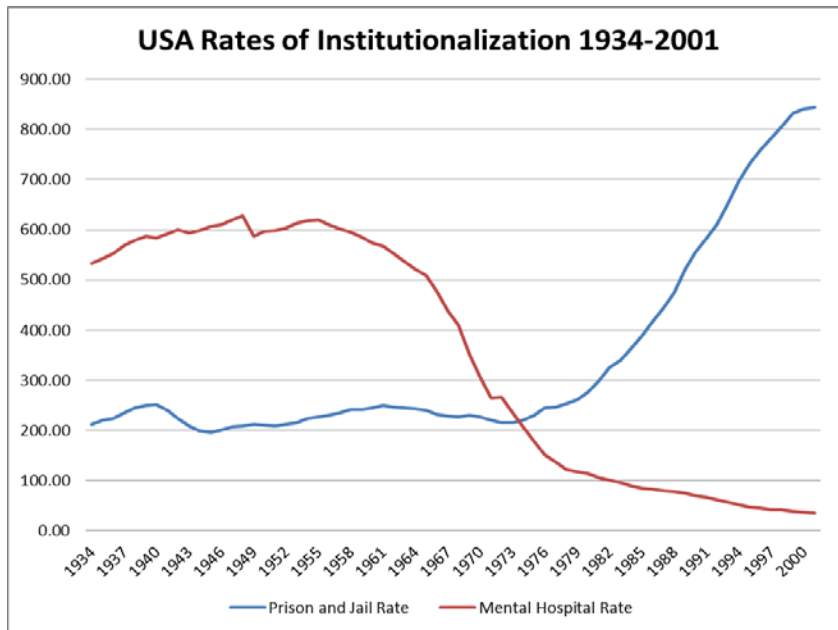


Figure 4: Rates of Asylum and Prison Populations in the United States (1934-2001)

A similar inverted relationship can be seen among a number of European countries over the past several decades, where prison population rates have been trending upwards, as evidenced in Figure 5, while mental hospitalization rates have been trending downwards, as evidenced in Figure 6.

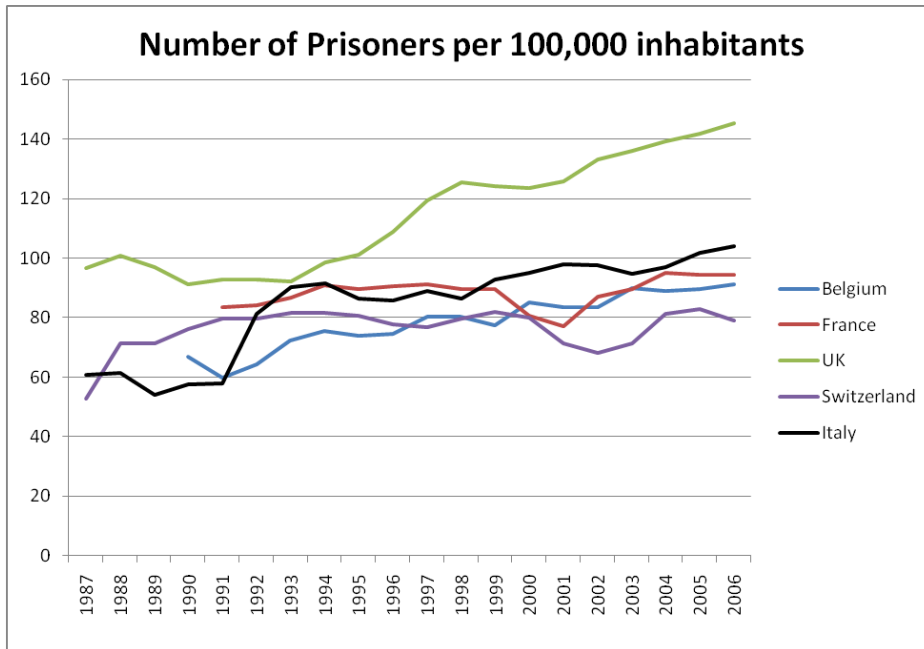


Figure 5: Rate of Prison Population in Belgium, France, UK, Switzerland, and Italy (1987-2006)

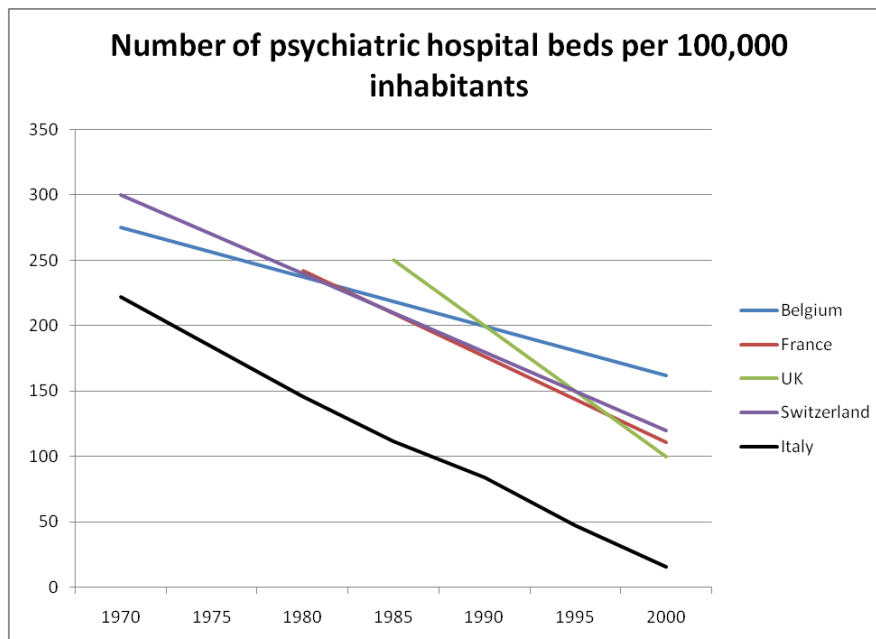


Figure 6: Rate of Psychiatric Beds in Belgium, France, UK, Switzerland, and Italy (1970-2000)

However, before the French data, the only movement that was observed was a move “from the asylum to the prison”, that is a conjugation of mental hospital deinstitutionalization and growth of imprisonment. France is a particularly interesting case for two reasons: the long tradition of state statistics (that have been gathered since the early XIXth century) and an agitated political history (including several wars). In France we find over 150 years several movements of total institutionalization from the prison to the asylum and from the asylum to the prison. Something stronger than a mere coincidence binds the two institutions.

The accumulation of these findings admittedly raise more questions and challenges than they answer. There is no simple explanation for the continuity of confinement, nor for the offsetting effect of these trends. As we know from the United States, the demographics of the populations differ remarkably: There was no simple transfer from the asylum to the prison (Harcourt 2011a). This is true in France as well, where mental hospital populations have been evenly divided along gender lines for all of the twentieth century (Meslé and Vallin, 1981 p. 1041), whereas the prison is overwhelmingly male. In France, as well, during the periods of most momentous shifts, the populations were not by any means substitutes: while the asylums were predominantly emptied, in the early 1940s, because of famine-induced deaths, the prisons were being filled with resistance fighters.

Establishing a strong, predictable, inverse relationship between asylums and prisons in several countries may also pose a challenge to some contemporary dominant theories of punishment: the idea of a recent “culture of control” in Anglo-Saxon countries (Garland 2001) or of role of different styles of capitalism on punishment practices in the West (Lacey 2008). The failure to include asylums in the study of contemporary penal practices may prove to be one of the most important shortcomings of the research community since the high tide of reflection on the asylum in the 1960s and 1970s.

This acoustic separation between the earlier theoretical work of the 1960s on the “total” or “disciplinary” institution and more contemporary empirical work on twentieth century imprisonment is stark, not only in the United States (Harcourt, 2006 and 2011a), but in other jurisdictions as well. There is a body of historical literature in France, for instance, about the dramatic rise in imprisonment during World War II and at the end of the 20th century—as well as during other military conflicts, such as the 1871 *Commune* civil war and the First World War. Separately, there is a body of historical and empirical literature in France about the dramatic decline of asylum populations during the same periods and the “hecatomb of the insane” (Von Bueltingsloewen, 2009). But the two bodies of research do not connect, and what is missing entirely is an analysis of the recurring mirror-image relationship between the asylum and the prison—and the resulting, surprising fact that, despite the intense variations within series, the aggregated counts and rates of institutionalization remain somewhat stable over time. This phenomenon was observed in the United States, and it is equally if not more impressive in France, given the more dramatic shifts in the different series and the longer time period of available historical data. This leads us to believe that the researchers contemporarily

interested in why certain types of political system have higher prison rates than others (for instance, Anglo-saxon countries and eastern Europe countries have higher prison rate than western European countries, see Cavadino and Dignan 2007) would do well to investigate asylums rates of the past and of the present.

These findings raise a set of important questions and challenges to established theories of punishment. But they require, first, rigorous substantiation. This paper will begin, then, in Part I, with a close empirical analysis of the historical data on asylum and prison populations in France before, in Part II, discussing the implications of these findings.

I. Asylum and Prison Populations in France

France presents a rich case study for the mirror image relationship and off-setting effect of asylum and prison populations for two important reasons: first, because institutionalization statistics for prisons and mental hospitals have been recorded since the beginning of the nineteenth century², so the time series is far more extensive than in the United States; and second, because French history has been replete with political shifts, wars, and economic crises during the past two centuries, which have had important repercussions on institutionalization rates. Despite all that, the empirical evidence clearly establishes that practically every trend in prison rates has been the mirror image of the trend in the asylum rate context.

² René Lévy suggests the use of the Barré and the Meslé-Vallin series that we use in this paper in his commentary of Harcourt (2006), see **René Lévy**, « Commentaire de Bernard Harcourt, *The American Carceral: Rethinking the Prison and the Asylum* », *Champ pénal/ Penal field* [En ligne], Vol. V | 2008, mis en ligne le 28 octobre 2008, consulté le 27 juin 2015. URL : <http://champpenal.revues.org/6663> ; DOI : 10.4000/champpenal.6663

A. The French Asylum Data

In order to track the rate of asylum patients, it is necessary to aggregate a number of different data sources, beginning with the Meslé-Vallin series.

1. The Meslé-Vallin series on institutionalization rates in mental hospitals from 1835 to 1976

A complete dataset on French asylum populations from 1835 to 1976 was compiled by France Meslé and Jacques Vallin in 1981, in an interesting paper in which they also addressed possible explanations for a surprising phenomenon that their data uncovered—namely, the drastic drop of psychiatric institutionalization since 1972, after a constant rise over a century.

As Meslé and Vallin explain, psychiatric statistics were the first hospital statistics to be officially registered in France. For 180 years, several institutions from the *Statistiques générales de la France* to the *Institut national de la santé et de la recherche médicale* (INSERM) have conducted census counts of the number of hospitalized patients on December 31 of each year. Meslé and Vallin collected those data and corrected them, taking account of the fact that during certain years some local data were unavailable. For the period 1835 to 1870, the data are only available as five-year averages. Moreover, all data are missing for the period 1913 to 1920; however, as the authors suggest, during the First World War, mental hospital rates were probably declining, as they did during World War II for which the data are available, a hypothesis

that is corroborated by the few available data sources. We will call this data series the “*mental hospital patient rate*.”

2. INSERM data on mental hospital beds from 1974 to 2009

Since 1998, a new organization called “*La Direction de la recherche, des études, de l’évaluation et des statistiques*” (DREES) has been in charge of compiling health statistics in France and has collected data going back as far as 1968; however, the DREES does not collect census data on mental hospitals. The INSERM has also continued to collect data, but also does not record the number of patients hospitalized on December 31st (or at any other given moment). Hence there is an unfortunate discontinuity in the time series and no exact way to continue the Meslé-Vallin “*mental hospital patient rate*” after 1976.

There is, however, another data source available that offers a way to continue the post1976 data and also to compare a period overlap for reliability. The INSERM has maintained data, for the period 1974-2009, on the *number of mental hospital beds*.

There are several reasons to use the number of hospital beds as a continuation for the number of hospitalized patients. First, for the few years where both data are available (1974-1976), the rates are similar (204-193 patients per 100,000 habitants versus 184-186 beds). Second, Meslé and Vallin observe in their 1981 paper that hospital beds started to decline in response to the decline of hospitalized patients, which is reflected in the data. Third, the decline in the number of available hospital beds is substantial over this period (from about 100,000 to less than 40,000 in 35 years), and it is difficult to imagine that the occupation rate of those beds would vary so widely—in other words, that

overcrowding of hospital beds would reach 2:1 or even 1.5:1 during a peaceful period. In addition, there is no current discussion of mental hospital bed overcrowding in France³. The data thus seem reliable and can be used to extend the Meslé and Vallin time series. We call this data series “*mental hospital bed rate*.”

3. Data on private hospitals

Thus far, the data cover only institutionalization in public hospitals. Data on private clinics were only started to be compiled in the year 2000. Meslé and Vallin do note, however, that the number of private mental hospitals grew during the twentieth century and that it is safe to assume that they off-set in some small part the decline in public hospitalization.

Together, the data on the rate of asylum in France over the period 1835-2009 is represented in Figure 7.

³ An internet search using Google for “*surpopulation des hôpitaux psychiatriques*” reveals less than ten results on French websites, all emanating from anonymous comments to press releases.

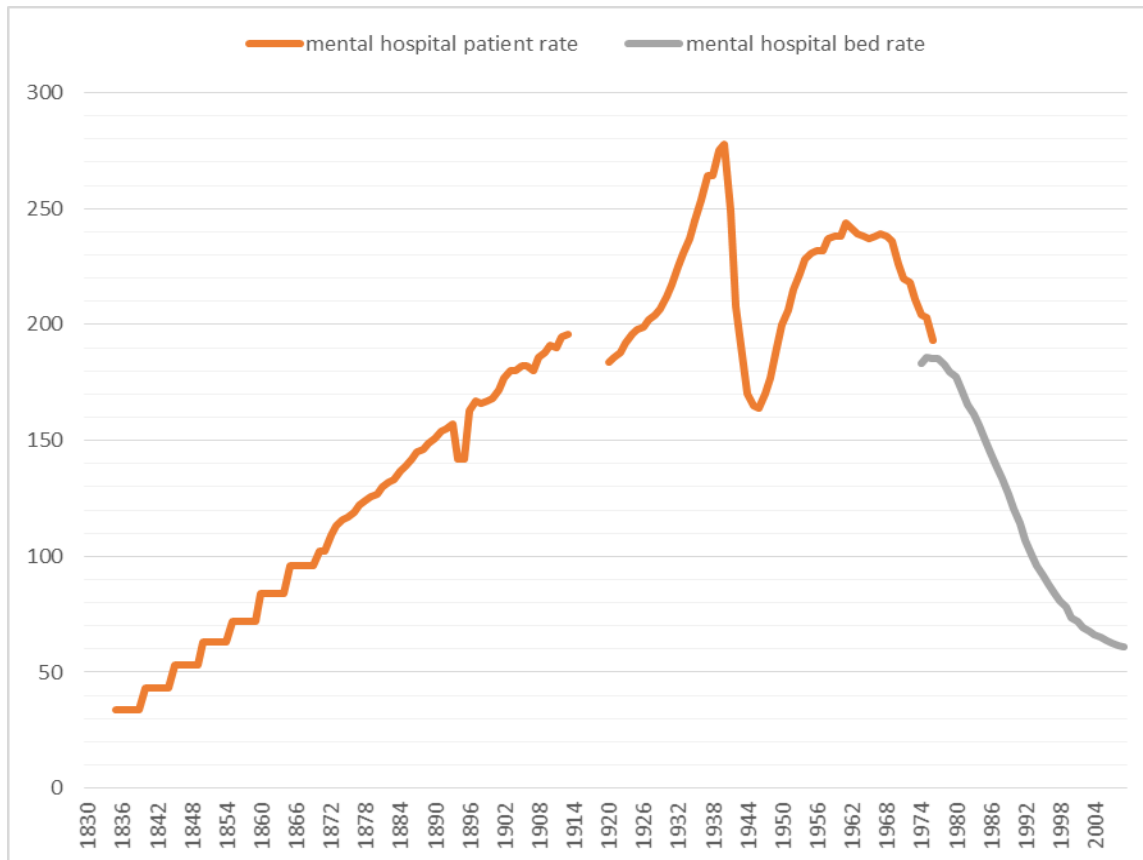


Figure 7: Mental Hospital Institutionalization Rates in France 1835-2009

B. The Major Variations of the Asylum Rate and the Principal Explanations

Overall, the variation of the asylum rate in France over the past 180 years has been dramatic. From a rate of 34 per 100,000 inhabitants in 1835 to 278 at the dawn of World War II, with a rate that varied between 150 and 250 per 100,000 in the decades following the war, the elasticity of asylum populations is impressive. It has essentially varied from a factor of 1 to 8.

Figure 7 reveals three distinct trends in the evolution of asylum rates: (a) a steady increase for the first century, (b) interrupted by major disruptions during wartime, (c) followed by a steady decrease since the 1960s.

a. 1835-1939: From the discovery of the asylum to the over-inflation of asylum populations

Apart from two dips, the first in 1894-1896 and the second in 1913-1920, the evolution of asylum populations from 1835 to 1930 reflects a steady rise, an increase that would accelerate between the wars. This explosion of asylum confinement is relatively well known and has given rise to a number of important theoretical works in the literature, ranging from David Rothman's work on the "discovery" of the asylum, published in 1971, to Michel Foucault's book on the history of madness (1961).

This period marks the birth of the confinement of the insane: From 1835 to 1930, the asylum rates increased almost linearly by about 40 patients per 100,000 inhabitants every ten years, and managed to rise from a rate of 34 to 212 in a little less than a century.

However, during the 1930s, the rise in asylum rates became even more dramatic, with a growth rate that more than doubles during the following decades. Several explanations have been offered for this shift during the period 1918-1940, which the French generally dub the *entre-deux guerres*. At the time, of course, hospitalization rates were mainly interpreted as a reflection or measure of the mental health of a population. Émile Durkheim, for instance, in his 1886 book *Suicide*, used the institutionalization rates of different European religious groups (Jews, Catholics, and Protestants) and of different European countries as a proxy for the occurrence of mental illness among those

groups (2010, pp. 57-81). In the 1930s, psychiatrists also discussed the sudden rise in confinement as a reflection of mental health issues, rather than public policy. Several commentators viewed rising hospitalization rates as a confirmation of the “degeneration theory”—the theory that the human race was declining, resulting in a propagation of madness (Zubin, Joseph, Gerald Oppenheimer, and Richard Neugebauer, 1985; Von Bultzingsloewen, 2009, p. 325)

Today, however, we tend to interpret mental hospitalization rates as an indicator of institutional policies, rather than of mental illness. This shift is reflected in the very title of Meslé and Vallin’s original 1981 paper, “*Population of mental hospitals: evolution of illness or a change in medical policies?*” (“La population des établissements psychiatriques: évolution de la morbidité ou changement de stratégie médicale”). The rise of mental hospitalization rates in the *entre deux-guerre* is now seen as the triumph of the *Aliénistes* School, which vouched for institutionalization as the best treatment for mental illness. This, combined with the low success rates of institutionalization in eradicating the symptoms that justified it in the first place, resulted in the lengthening of the average time of hospitalization.

b. 1914-1918; 1940-1945: The lowering of mental hospital admissions during wartime

During both the First and Second World Wars, France experienced lower admissions to mental hospitals. This is well documented during the second period. Although data are scarcer for World War I, the available evidence nonetheless indicates the same phenomenon. (Von Bultzingsloewen, 2009, p. 37)

Contemporaneous accounts of this phenomenon were, once again, focused on variations in mental health, as if there was no change in institutionalization practices during wartime; psychiatrists speculated at the time that during times of crisis, there were fewer alcoholics, and that since alcoholics were a significant part of male admissions to mental hospitals, that fact alone would have explained the lower admissions (p. 25).

However, the extraordinary fall in the number of mental patients during World War II has since been linked to what has been called a hecatomb of the insane (*“hécatombe des fous”*). Its origins are still being researched and discussed; while the hecatomb itself had been regularly mentioned by opponents of mental hospitalization since the end of the war, its causes were a taboo subject before a PhD dissertation raised the issue in 1980 (Lafont, 1987). What we do know is that, on account of the war, an astounding 45,000 mental patients died (45,000 was the over-mortality attributed to the war, the total death toll was 76,327) —which amounts to half of the decline in mental hospitalization rates. Isabelle von Buelzingsloewen has recently documented that, contrary to what has been said in the popular press, there was no eugenics program in force at the time that would have been responsible for the deaths of mental patients (2009, p. 325). According to her research, famine and malnutrition during a time of rationing took more than a year to be diagnosed by the medical profession which, not being used to see patients dying of hunger and unable to recognize the symptoms, confused hunger symptoms with other diseases. It then took more than a year for the medical authorities to convince the Vichy government that mental hospital patients needed higher food rations than the rest of the population—von Buelzingsloewen suggests that asylum rations were regularly pilfered by personnel at the hospitals and

that asylum patients were not able to complement the insufficient national rations on the black market, as most other French citizens did. The Vichy regime's first answer was that mental patients were not a higher priority than any other French citizen, and that there was no reason to supplement their rations. After a change in ministries in 1943, food rations for mental patients were raised and the famine stopped. According to von Buelzingsloewen, though, only half of the fall in hospitalization rates is attributable to the excessive mortality rates of patients; reduced mental hospital admissions, explained at the time by lower "alcoholism" admittances, accounted for the rest of the dramatic drop in the asylum population (2009, p. 37).

c. Deinstitutionalization: anti-psychiatry, drugs, sectorization, and diminishing length of admissions

The literature on deinstitutionalization in France reveals that it is a relatively recent phenomenon that started later than in the United States. The explanations for deinstitutionalization tend most often to be the same explanations offered throughout the West: the evolution of psychiatric treatment and increased use of psychotropic medication, the rise of the anti-psychiatry movement, and the scandals that plagued the state mental hospitals during World War II (Ailam, et al., 2009). France also had special social programs that favored deinstitutionalization, called "*politique de secteur*." Before 1960, a 1838 law compelled every county (*département*) to have an "*asile départemental*"—which effectively created most of the French mental hospitals. The law forced mental patients to receive treatment in the asylum of their county. But a new ordinance in March 1960 created what was called the "*sectorisation*" of the "*départements*." Each "*department*" is, since then, divided into sectors, and in each

sector a multidisciplinary team is in charge of mental patient treatment. The *sectorisation* allows patients to be treated at their homes, since the medical teams are closer geographically. The French law of 1985 that made the *politique de secteur* official marked the beginning of the gradual decline of hospital beds.

While there are strong parallels in the explanations given for the decline of mental hospital rates in France and the United States (Harcourt, 2011c), there is an important lag between the two events. The equivalent to the *politique de secteur* in the United States was the Kennedy administration's advocacy of community mental health centers in the early 1960s (Harcourt, 2011c). The equivalent in France would be the law of 1985, and the impact would therefore occur a couple of decades later. A 1995 paper in a French medical journal observed that chronic homeless mental patients—first described in the United States and Canada—were beginning to appear in the mid-1990s in French psychiatry literature (Florentin, 1995). Von Bultzingsloewen remarks that while the deinstitutionalization movement could have started right after the war, it was slowed down by several factors, including decolonization and internal disputes among psychiatrists (2009, p.414).

C. The French Prison Data

The data for the rate of prison populations in France also needs to be compiled on the basis of several data sources.

1. The Barré series: prison rates from 1830 to 1984

In 1986, Marie-Danièle Barré published an extensive compilation of prison data going as far back historically as possible and indicating what methodological issues were

encountered while doing so. Like the Meslé-Vallin series for asylums, the Barré series records the census count of inmates in prison at a given time; however, instead of being a December 31 census count, like the Meslé-Vallin series, the Barré series uses January 1, the date chosen by the penitentiary administration (*administration pénitentiaire*) to count its inmates. Since these two dates almost coincide, the two series allow us to compare the numbers and rates of prisoners and mental patients at essentially the same dates. In order to do this, the years compared have been adjusted: December 31 of year n will be compared to January 1 of year $n+1$. Thus, for our time series, we have subtracted 1 year from the Barré series so as to make the possible. In our figures, the prison population data will be understood as December 31 of the prior year, so as to allow comparison with asylum populations. We call this series the *prison rate*, and it can easily be continued until 2009 using the same methodology that Barré used.

The Barré series records all inmates supervised by the “*administration pénitentiaire*” both in prisons (*maisons centrales*) and in jails (*maisons d’arrêt*). Over the course of two centuries, the responsibilities of the *administration pénitentiaire* changed, and several methodological artifacts affect the general trends. These events are acknowledged by Barré, who lists the issues encountered in creating such a series.

First, from 1863 to 1933, the *maisons d’arrêts* (jail) numbers include the “*chambres et dépôts de sûreté*” (precinct cells). While these numbers are not significant, as these facilities account for less than 1% of the population, it is difficult to know the status of the populations incarcerated in them. If in theory these facilities were destined to receive populations awaiting a transfer to another facility, Barré suggests that

prostitutes and vagrants were often detained there for short-term transitions, since they were a particular focus of policing.

Second, from 1830 to 1850, the number given by the *administration pénitentiaire* is an aggregate of both kind of facilities, with “no precision on their origin or reliability” and “no gender-ratio.” This 20-years series appears for the first time in a 1853 report, and hence may very well be inaccurate. We should add that Barré found the numbers in the report surprising. For instance, on December 31st of the year 1850, there was 41,913 prisoners according to that report, a number that is stable for ten years (40,580 in 1841) while in 1851, the first year with the new counting system, there are 43,185 prisoners in the male prison only. If we add female prisoners, the number increases to 51,300. While it is difficult to believe the number of prisoners jumped 20% in one year without reason, we have no way to adjust these 1830-1850 data in our series.

Several small *ad hoc* detention centers were excluded or included depending on Barré’s methodology each year, though, as she explained in her paper, most of them were not significant for the overall trend of the series. For instance, a “*Fort*” used to detain “military prisoners and Arabs” was used from 1851 to 1854 but only amounted to less than 200 prisoners. A bigger issue is posed during wartime, were the *administration pénitentiaire* was not able to count the number of prisoners in all of its facilities for the years 1914, 1938 and 1939. While Barré offers partial data on those years, we have chosen to exclude them entirely. Barré does not offer data on World War II; however, because it is such an interesting period in prison population shifts, we use the numbers estimated by prison historian Pierre Pédrón (1993).

Moreover, the Barré's series purposefully excludes several kinds of detention from the *prison rate*, mostly due to cohesion issues in the series, some series being interrupted over time or poorly documented. The first is *établissements d'éducation correctionnelle* (correctional facilities for juveniles). Barré excludes those juveniles from her data because the aim of this "punishment" was not the same as the prison and also because the *administration pénitentiaire* stopped supervising these facilities after 1945.

The second kind of detention excluded from the series is the *bagnes* (penal colonies). The reason for the exclusion is technical. The issue faced by Barré was that the colonies were not consistently supervised by the *administration pénitentiaire*. Hence it was very difficult to know exactly how many people were subject to this sentence. The *bagnes* were used until 1938, and, from 1850 onwards, between 48,000 and 97,000 prisoners were sent there. It is however impossible to know the number of *bagnes* prisoners at any given time.

2. 1984-2009: The "*rapports annuels d'activité de l'administration pénitentiaire*"

We prolong the Barré series beyond 1984 using the same sources that she used, namely the official data of the ministry of justice that is published each year in the *Rapports annuels d'activité de l'administration pénitentiaire* and in the *Annuaire statistiques de la Justice*. The time series is represented in Figure 8.

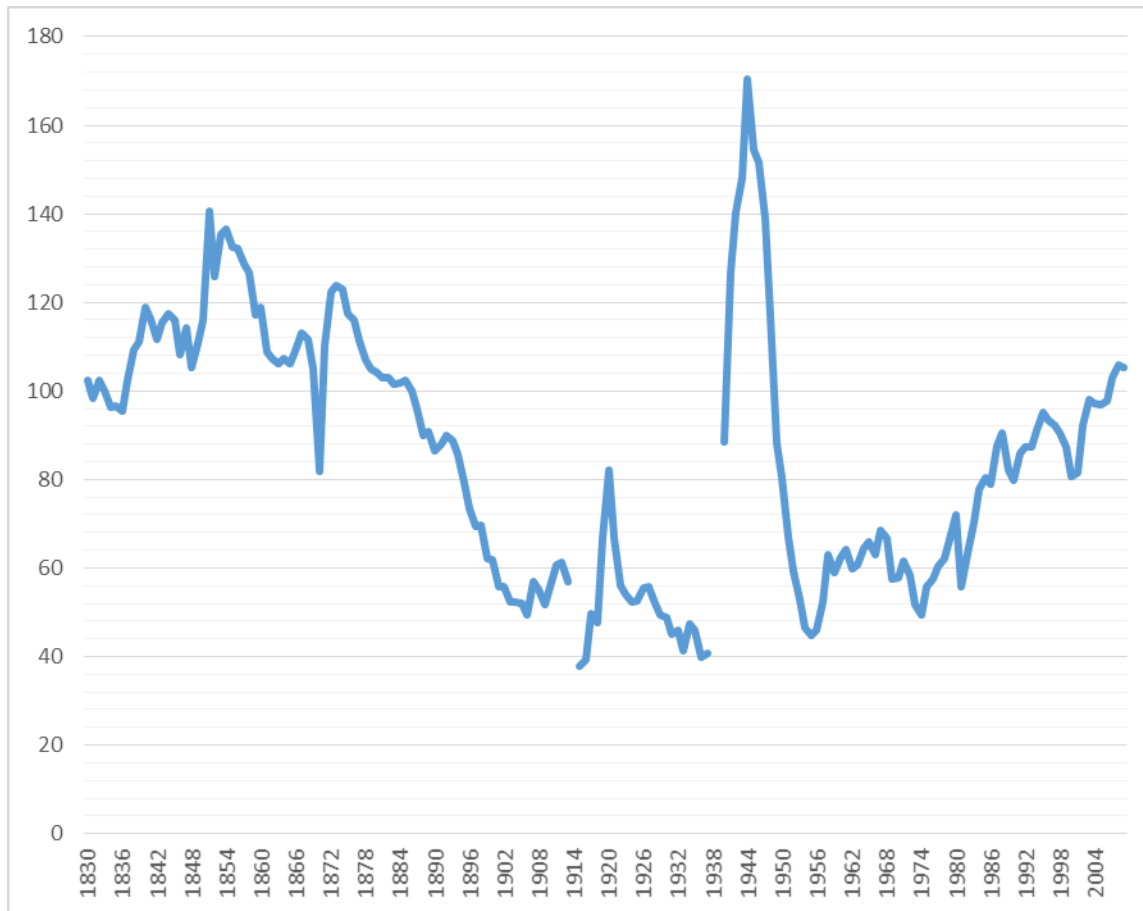


Figure 8: Prison Rate in France 1830-2009

D. Explanations for shifts in prison populations

Remarkably, the overall trend in prison rates is almost the exact mirror of the asylum. Prison rates start relatively high in the 1830s, and the general trend is in decline until an all-time low of 1937, followed by some stability until the mid-1970s decline, and a rise from 1975 to the present time. This simple trend—fall/plateau/rise—is interrupted by four wars: the Franco-Prussian war of 1870, which was marked, during the following years, by the insurrection of the Paris *Commune*; the First and Second

World Wars; and the Algerian war. At the end of 1974, the prison rate is just below 50 per 100,000 inhabitants. From 1975 onwards, the prison rate will steadily increase to reach the double of that number (105) in 2009. Like asylum rates, there is a strong variation of prison rates over the past 180 years, from a low of 39 to a high of 180 per 100,000 inhabitants, and prison rates have varied by a factor of 4.5.

As with the asylum rates, there are three trends in the evolution of prison rates in France. They are, however, inverted: first, a steady decrease; followed, second, by a plateau for a century and a half, with interruptions during the wars, especially World War II; and third a steady increase since the 1970's.

a. *1850-1937: The steady decline in prison rates*

While prison rates start at a high level (by French standards) in 1830—approximately 100 per 100,000 inhabitants—they follow a steady decline for a century, with the exception of wartime. According to Barré, “the most plausible hypothesis is not that the average prison sentence was shorter and shorter, but that there was less and less use of prison by the criminal justice system during this period” (p. 126). Another French historian, Jacques-Guy Petit, explains the steady decline by suggesting that “French judges were more strict during harsher political times and became more democratic during the Third Republic” (Petit 2002, p. 97). Petit also suggests that after 1883, French judges’ socio-economic origins became more varied and as a result, they became “less attached to traditional values.”

b. *The peaks during the wars*

A rise in prison populations during wartime is something that nineteenth century observers already knew and theorized. The Italian criminologist Enrico Ferri, for instance, hypothesized the “law of criminal oversaturation,” according to which economic and political crises, such as wars, resulted in a higher crime rates that then produced greater prison populations. The most impressive and documented peak is the one that happened during World War II.

Between 1939 and 1946, prison populations in France nearly tripled. This unprecedented rise was composed of three distinct waves of prisoners, depending on the historical context at the time. The first wave, from the beginning of the war in 1939 to the armistice of September 1940, consisted mainly of traitors and spies who had helped the Germans. The second wave, which made the largest contribution to prison population growth, from the beginning of the occupation to the *Libération* in June 1944, involved three components: a first part composed of political prisoners, called “terrorists” by the regime, including *résistants*, communists, and the like; a second part associated with an important increase in court severity that was produced by the creation of ten different kinds of “special” courts; and a third part made of prisoners convicted by German courts who were detained in French prisons. Finally, a third wave was composed of those who collaborated with the Germans. After the *Libération*, ad hoc courts were established during the short period called the *épuration*, and Barré estimates that, by the end of the year 1945, about half of the French prisoners were detained for acts of collaboration.

c. 1975-2009: the rise of the prison in France

After the war, the prison rate in France oscillated around 50 per 100,000, with the Algerian war contributing to another small peak in the series. However, the trend is abruptly disrupted around the mid-1970s: the prison rates start steadily rising again, reaching over 100 per 100,000 in the decade of the 2000s. French scholars have observed a punitive turn—a “*tournant sécuritaire*” or even a “*frénésie sécuritaire*”—in French penality (*Carceral Notebooks* 5, 2009). It involved, first, a “political obsession with violence” in the 1970s that led to stricter penal laws and a higher arrest rate (Robert and Zauberman 2010), and then a penal populism that has been widely discussed in the French literature.⁴

E. Aggregating the Institutionalized Populations

In France, perhaps even more so than in the United States (Harcourt, 2006 and 2011a), the mirror image and constant off-setting of prisons and asylums is striking. During the first century for which the data are available, prison rates fell while asylum rates rose, almost showing an exact symmetry—except during wartime, when the opposite occurred. After a plateau for both rates during the 1950 and 1960s, the trends are inverted, and in contemporary times prison rates have been rising while asylum rates have been falling. *See* Figures 2 and 3 *supra*.

The result is that the aggregation of mental hospital and prison rates shows a surprisingly stable rate. For most of the period—with the exception of World War II—

⁴ For a collection of articles discussing this latter “security mania” in France, *see Carceral Notebooks, Volume 5* (2009)

it oscillates between 150 and 250. In 2009, the rate of the institutionalized population was practically the same as it was in 1850. This is reflected in Figure 9.

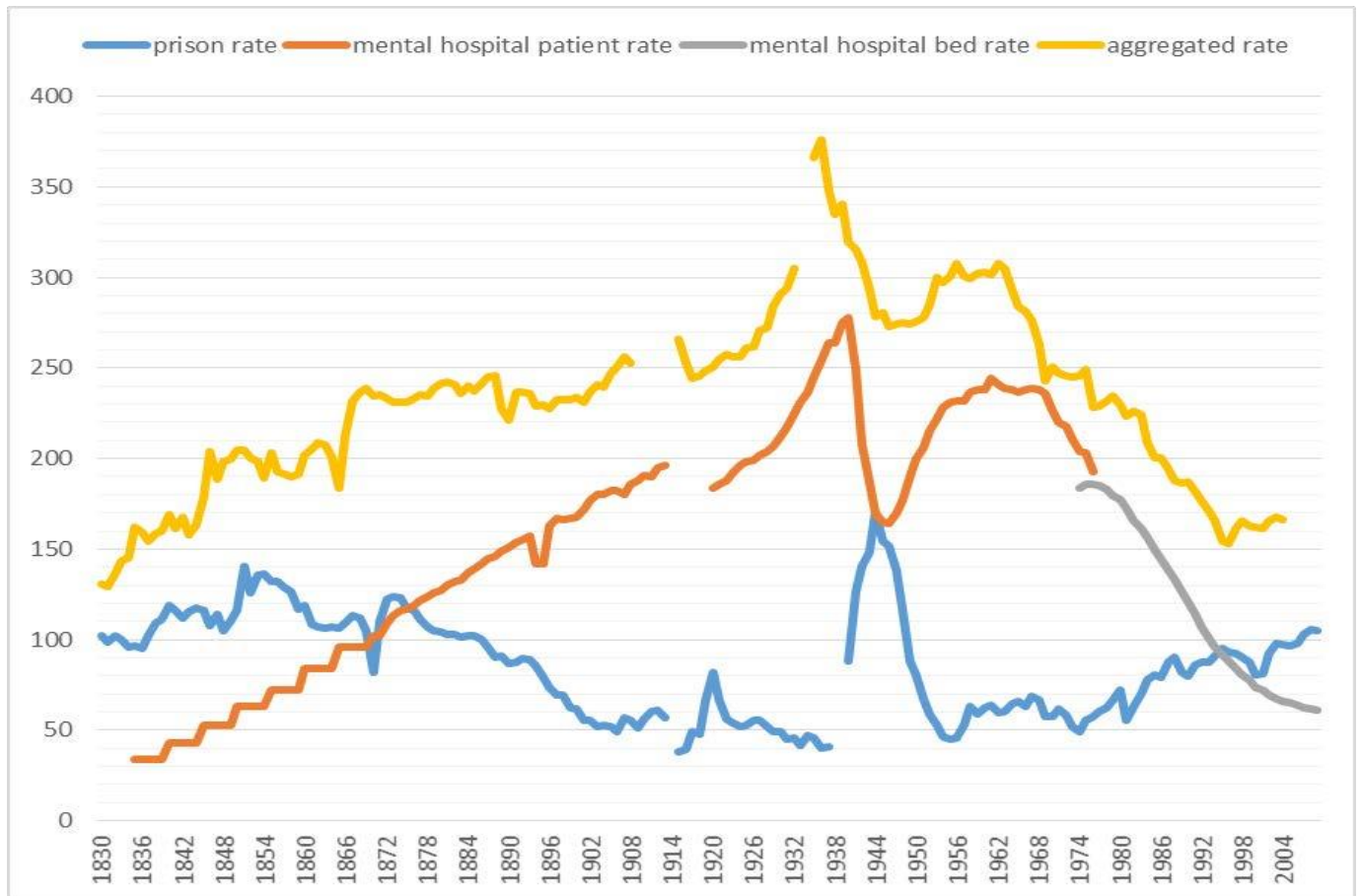


Figure 9. Aggregated Institutionalization Rates in France

The off-setting effect is very similar to the one found in the United States in the course of the twentieth century. In the year 2000, the aggregated rate of the institutionalized populations in the United States is, at the height of mass incarceration, practically equivalent to what it was in the 1950s, before psychiatric deinstitutionalization, as reflected in Figure 10.

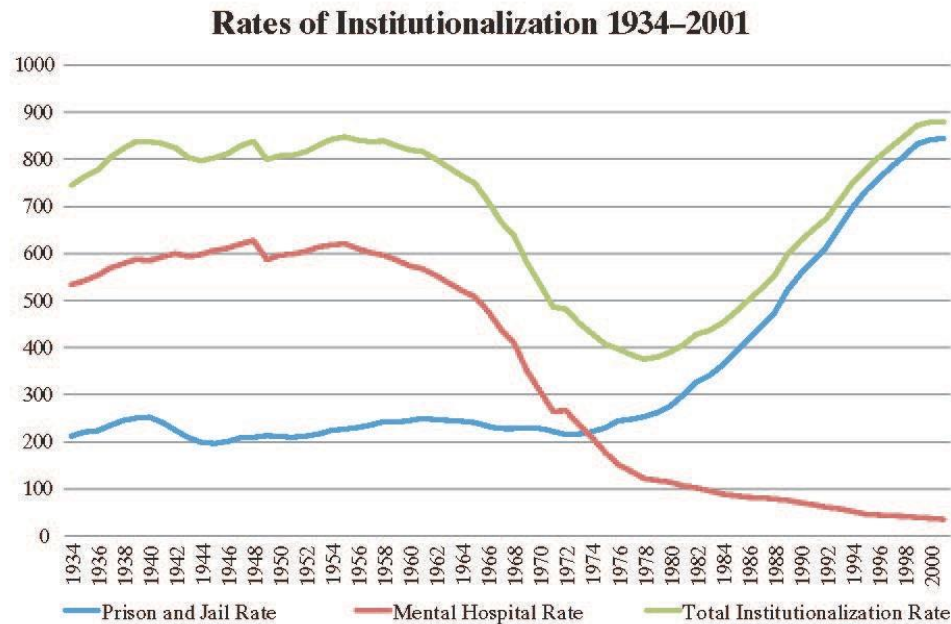


Figure 10: Aggregated Rate of Institutionalization in USA, 1934-2001

II. Discussion

Mental hospital deinstitutionalization and the rise of the prison have happened in many, if not most, Western countries. But the French data suggest that this off-setting effect is not a coincidence, since several movements from one institution to the other has happened in the agitated, long, French history. This suggests that this off-setting effect may be widespread, which would challenge a number of contemporary theories of punishment and society.

For instance, it has been argued that prison rates have risen as a result of a “culture of control” over the past forty years (Garland 2001), that they are higher in neoliberal Anglo-Saxon countries (Cavadino and Dignan, 2007) or in countries that have styles of capitalism that involve more “liberal market economies” and “first past the

post” electoral politics (Lacey 2008), as well as in former Soviet Union countries. Those theories of punishment tend to look for explanations of high prison rates in the commonalities of those countries. But our research suggests that contemporary high prison rates might have deeper roots over the *longue durée* of aggregated prison and asylum populations.

Our work offer no obvious explanation for this off-setting effect, although it can eliminate a few of the most tempting one.

The first concerns the institutions themselves in their materiality. There certainly have been cases where asylums have been converted into prisons. So, for instance, if we look at the United States, there are a number of mental hospitals that were rehabilitated into detention facilities or into the psychiatric wards of departments of correction (Metzl, 2009; Parsons, 2011). And there is historical precedent for this as well. Foucault recounted in the *History of Madness*, for instance, how facilities for lepers would be transformed, first, during the late medieval period, into treatment facilities for venereal disease, and later, in the seventeenth century, into hospitals and asylums. In a “series of measures that came into force from March 1693 to July 1695, the goods of the leper houses were redistributed among other hospitals and institutions for the succouring of the afflicted” (Foucault 2006, p. 4). A century later, Foucault observed, the names of the most famous Parisian leper houses—Saint-Germain and Saint-Lazare—would “crop up in the history of another sickness,” namely madness. (Foucault 2006, p. 3). Foucault suggested that the treatment of leprosy in the Middle Ages gave birth to exclusion rituals and spaces that were filled centuries later by mad people. Hence, one hypothesis to explain the stability of exclusion policies could be the conversion of one exclusionary

institution into another—a question of real estate. It could trace to a material or budgetary matter.

But there are sufficient counter-examples to cast doubt on such a universal explanation. France offers a good illustration. With a tripling of its prison rates in just a few years, the Vichy régime encountered severe budgetary and material constraints, including problems of prison overcrowding and lack of facilities. To triple the number of prison beds, the Vichy government needed to expand the available stock of buildings, and the government addressed this by creating a list of available facilities suitable for prisons. One might have suspected that, since asylums were being emptied at the same time, they would figure prominently on the list of buildings to convert into prisons. However, that is not what happened. Not only did the Vichy government not convert any asylums into prisons during the period, but the list of available buildings made by the government did not contain a single mental hospital. The French prison historian, Pierre Pédrón, reviewed all of the official correspondence of the time, and as far as we know from the archives, the idea was never suggested. This may be explained, in part, by the fact that the institutions were treated by different ministries. In its search for available buildings that might have been suitable for prisoners, the government proceeded to list, first, abandoned prisons— abandoned from an earlier time of higher prison rates (as we can see from Figure 2, the Vichy prison rates were approximately equal to the 1851 prison rates) —then buildings that had been sold to local authorities or to private parties. At the same time, abandoned mental hospitals were being converted into military hospitals (Von Buelzingsloewen, 2009, p. 42).

A second set of questions concerns the fungibility of the populations. Here, the evidence in the United States is clear: the demographic differences between the asylum and the prison populations are far too important to support the idea that there was a simple transfer. In the 1960s, about half of the institutionalized patients were women, whereas throughout the twentieth century about 95% of the incarcerated were men. In the past, the mental hospital populations were far more white and older. In 1923, for instance, 92.2% of asylum patients were white and only 7.6% percent were African American, in sharp contrast to prisons today which are over 40% African American and 20% Hispanic. That year, in 1923, the mental institutions were 52.6% male and 47.4% female. Overall, the asylum population was far whiter, older, and included more women: the demographics changed dramatically (Harcourt 2012). The same is true in France, where the demographic data on prisoners and mental patients indicate that the populations are far too dissimilar for a simple transfer to have occurred between the asylum and the prison. In France, prisons are almost exclusively male while asylums have had a balanced gender-ratio. The only category that seems easily able to go from one institution to another are “alcoholics”, which are predominantly male (Vallin and Meslé, 1981).

On the other hand, it is remarkable that the detained populations, though demographically different, have consistently represented the most marginalized populations in society. In the United States, both the asylum patients of the 1930s and prisoners today are composed predominantly of low socio-economic populations that constitute the more marginalized portions of society. Similarly, in France, at least during World War II, those who joined the resistance were more likely to be anti-authority, anti-

police, or used to living in opposition to law enforcement or clandestinely. It may be interesting to explore, then, whether the aggregated institutionalization rates actually track or measure the rates of marginalized populations in given countries. Mental patients and prisoners have tended to be socially perceived as deviants, as at the margin of society. It may be interesting to investigate what mental patients, the common law criminal, and the *résistants* had in common—each of which, at a different time, composed a substantial part of the institutionalized population during the last two centuries on French public policies. Apart from Simon Epstein who showed that early French *résistants* often were political extremists (Epstein, 2008), there is no research on the social marginality of Vichy political prisoners. One could relate this question to a more contemporary debate in the medical profession about whether “political terrorists” (which was the official criminal designation of the *Résistance* under the Vichy government) should be labeled as “psychopaths” (Cooper, 1978)—a medical debate that reflects some perceived continuity in the categories. One could also relate it to the debate over the relationship between political and common law prisoners (Foucault 2013, p. 147). Another research avenue offered by the demographic comparison relates to perception of danger and marginality: It may be that in the early twenty-first century, representations of the dangerous individual focus on the poor, young, minority male, while in the mid-twentieth century, representations of danger and marginality were more varied and encompassed all layers of the population. Research on how contemporary gendered racial stereotypes—which depict minority males as the most dangerous figures (Wingfield, 2007)—have been born may be a way to approach this issue.

This raises, then, a number of paths for research. Could it be, for instance, that different societies have different “detention” thresholds? Economists have developed theories about natural rates of unemployment, but could it be that there are natural rates of institutionalization? Might there be a threshold of exclusion beyond which it is too difficult to exceed—physically or emotionally? Might the institutionalization, at a certain point, begin to touch too many families? And if there is a stable rate of exclusion, might it serve as an indicator of a society’s tolerance for deviance?

The findings also raise questions—or doubts—about the explanations that are so often offered for the variations of prison or asylum rates. No one today believes the kind of explanations and theories that were originally offered to explain these trends. For instance, no one today would credit earlier explanations that there were more mad people or that the human race was degenerating. Nor would we credit today the early explanations that prison rates are a direct reflection of crime rates or of criminality in society. Today, the more accepted explanations tend to focus on the policy side, rather than the genetic or biological. Scholars look mostly at punishment policies and cultures. And regarding asylums as well, most of the explanations revolve around policy shifts: deinstitutionalization is explained as a product of welfare policy, or the anti-psychiatric turn. But what if the surface-level differences—and their off-setting effects—mask more consistent, higher-level policy continuities: for instance, a continuity of confinement, rather than deinstitutionalization and mass incarceration? Then, what we would need to explain would not be deinstitutionalization and mass incarceration, but rather the very continuity of confinement. Rather than crime and punishment literature trying to explain why we control *more and more*, we may be in need of social exclusion literature focusing

on why we control *differently*, and why, while the aggregated level of exclusion is nearly identical, the profile of the excluded person is so different at the beginning of the twenty-first century than it was in the mid-nineteenth century.

The findings also raise questions about potential leads and lags as between countries or regions. So, for example, it appears that the French case and, more generally, European countries reflect about a twenty-five year lag behind the most recent American experience: a lagged decline in mental hospitalization and a lagged increase in prison populations. What would explain that lag? And does it recur? Loïc Wacquant argues that Western Europe penal policies often mimic American policies with a two-decade lag (2009, p. 297). Others have documented a similar lag in the transmission of “zero tolerance” or “broken windows” policies (Harcourt, 2007). How are these lags to be explained?

Also, why is it that the aggregated institutionalization rate in the United States has always been higher than in France or other European countries? Has there been a stronger tendency towards social exclusion in the United States over the past 200 years, which, depending on the period, takes the form of the asylum or of the prison? If so, what would explain it? Could it be the cost? After all, excluding a significant portion of the population implies a range of costs. First, it eats up a significant portion of the state’s budget to maintain these institutions and compensate guard labor. From a purely budgetary perspective, then, there may be a limit to how much government can spend on excluding people. But there are also diffuse social costs on the general population, including those compiled by Bruce Western in *Punishment and Inequality in America* (2006) or by Amy Lerman in her study of the negative effects of the prison on democratic

citizenship (2013). Could it be that beyond a certain threshold, exclusion and its consequences become too prevalent? Or start touching too many families? The difference between exclusion levels in different nations, as well as the stability of institutionalization, could be examined through this prism. The fact that high exclusion levels are generally correlated with high income inequality might be another research avenue. It could be interesting to determine how levels of income inequality relate to tolerance for social exclusion.

Finally, the findings in this study raise a number of questions about ongoing research on the effects, consequences, or associations with institutionalization. They raise questions about the effects of prison levels on crime, on job markets, on education, and other social and political variables given that, in fact, there may be countervailing effects from the demise of the asylum. For example, contemporary studies have rightly emphasized the effect mass incarceration has on employment (Patillo, Weiman and Western, 2004, Western, 2006), while similar research in psychiatry journals of the 1960-1980s were trying to uncover “*The effect of psychiatric hospital admission on persons in employment*” (Wansbrough and Cooper, 1978), or the link between “*Social Class and Schizophrenia*” (Goldberg and Morrison, 1963, Dunham, 1964). While we are currently preoccupied with the employment of ex-convicts (Western, Bruce, Jeffrey R. Kling, and David F. Weiman, 2001), the *Journal of Mental Hygiene* published in 1958 a study of “*Employers’ attitudes and practices in the hiring of ex-mental patients*” (Olshansky, S., Grob, S., Malamud, I. T), that showed a similar preoccupation with the “mass incarceration” of its time. Could it be that the acoustic separation between the asylum and prison results in omitted variable bias in all these studies?

Conversely, in the United States, prior research revealed an inverse correlation between aggregated institutionalization and homicide rates, providing evidence of what has been dubbed an “institutionalization effect”—the product, possibly, of the greater vulnerability of the institutionalized populations to crime victimization (Harcourt, 2006, 2011a). However, in France, the available data on homicides does not appear—on a first, rough cut—to show a similar relationship, and institutionalization rates seem to correlate positively with homicide, as evidenced in Figure 12.

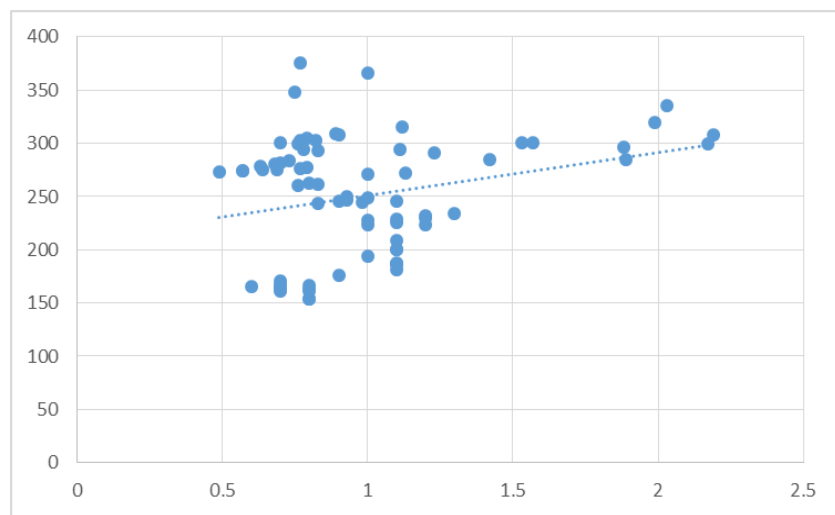


Figure 12. Aggregated Institutionalization versus Homicide Rates in France (1930-2009). [The year 1944 was ignored]

In fact, homicide rates in France and the United States have followed similar trends, while the change in exclusion policies was implemented in the United States long before it occurred in France.

French homicide rates were collected and compiled by Jean-Claude Chesnais for 1930-1970 and by Laurent Mucchielli in a 2009 study for the last four decades. As we can see from Figures 13 and 14, they follow the United States trends in a remarkably parallel fashion. Beginning with a stable rate at the start of the twentieth century, the trend experiences a few, well-localized peaks during periods of instability, such as World War II, then sees a rise and fall during the 1980-1990s. In the United States, the rise and subsequent fall are more impressive than in France, but they occur at the same time.

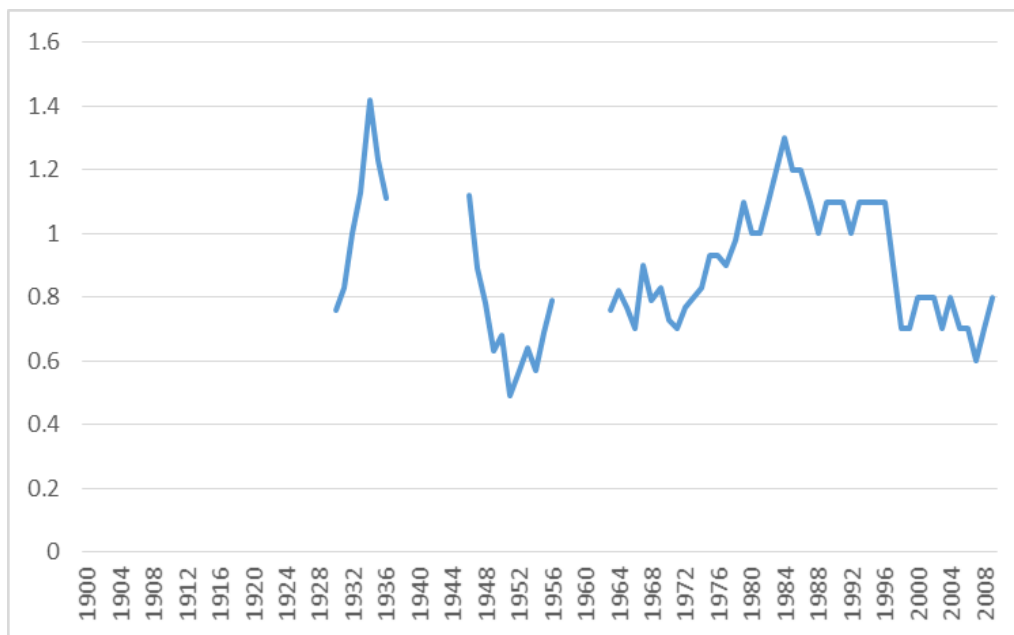


Figure 13: French Homicide Rates

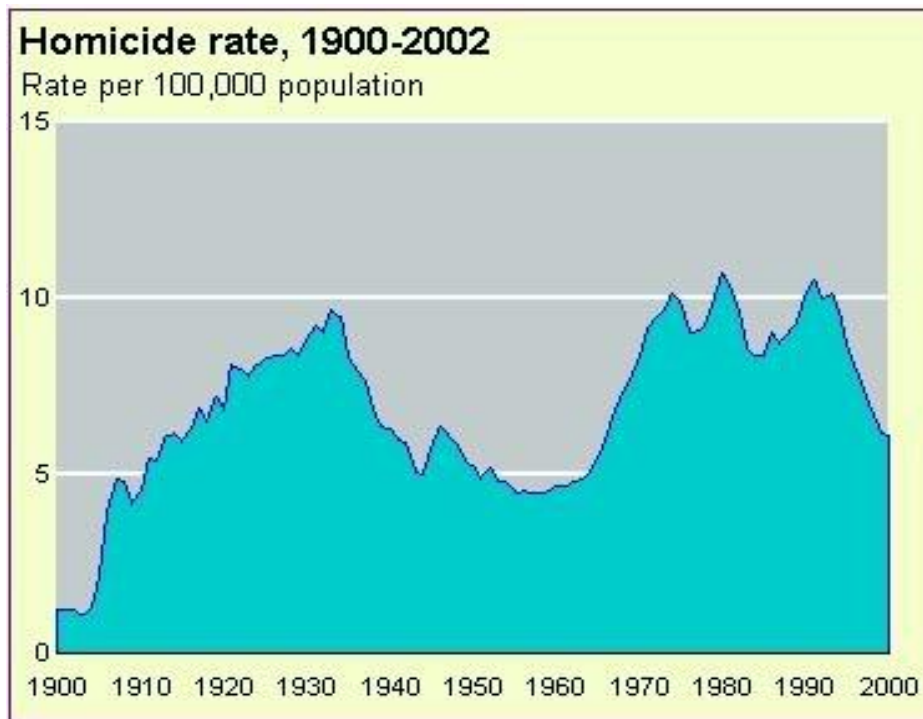


Figure 14: United States Homicide Rates (BJS data)

The parallel evolution of homicide in France and in the United States may shed doubt on the link to institutionalization—as well as other nation-focused explanations for homicide rates that did not occur simultaneously on both sides of the Atlantic. The asylum-prison connection, the evolution of death penalty policies, as well as the regulation of abortion, may all have asynchronous histories in France and the United States, in contrast to homicide which demonstrates synchronicity.

Conclusion

International comparisons of penal policies and crime statistics have often produced paradigm shifts in penal theory and criminology. Enrico Ferri, who compared crime and judicial statistics in England, France and Italy, reached the remarkable conclusion that “*Punishment, in fact, by its special effect as a legal deterrent, acting as a psychological motive, will clearly be unable to neutralize the constant and hereditary action of climate, customs, increase of population, agricultural production, economic and political crises*” (1917, p. 133). Similarly, Georg Rusche and Otto Kirchheimer, who compared prison and crime rates in four European countries, used their results to challenge the dominant idea, still today, of a crime-punishment nexus: since punishment and crime evolved independently, they argued, neither one of them may be necessarily causally related (2003, pp. 193-205). Our findings of a mirror image and offsetting effect of asylums and prisons in such a consistent pattern raise similar paradigm-shifting questions and challenges that may call into question many of our dearest criminological and punishment theories.

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